

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN JOHN C. BOHLINGER**, on January 9, 2003  
at 3:00 P.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. John C. Bohlinger, Chairman (R)  
Sen. John Esp, Vice Chairman (R)  
Sen. Jerry W. Black (R)  
Sen. Brent R. Cromley (D)  
Sen. Jim Elliott (D)  
Sen. Kelly Gebhardt (R)  
Sen. Bill Glaser (R)  
Sen. Rick Laible (R)  
Sen. Jeff Mangan (D)  
Sen. Carolyn Squires (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
Phoebe Olson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 45, 12/9/2002; SB 46,  
12/9/2002; SB 47, 12/9/2002  
Executive Action: None

**HEARING ON SB 45**

**Sponsor:** SENATOR KELLY GEBHARDT, SD 4, Roundup

**Proponents:**

Eric Griffin, Director Public Works, Lewis and Clark County  
Harold Blattie, Montana Association of Counties  
Vern Peterson, Fergus County  
Bill Gibbs, Yellowstone County  
Dan McCauley, ENTRANCO Engineering  
Jack Knorr, Stillwater COUNTY  
Robert Throssell, MT Technical Council  
John Ostlund, Yellowstone County  
Lee Provance, Gallatin County  
Sam Harris, Powder County

**Opponents:**

None

**Opening Statement by Sponsor:**

**SENATOR KELLY GEBHARDT, SD 4, Roundup**, said SB 45 was a bill to increase the amount of money a county could negotiate with an architectural or engineering firm without going through the formal bidding procedure and request for proposals. He maintained the advantage of this bill would be to save tax payer dollars. He alleged it cost an engineering firm at least \$1,000 dollars to put out a proposal, and it cost quite a bit for the County to advertise and go through the selection process. **SENATOR GEBHARDT** said this bill would be a means of streamlining the process for local government. He believed it was necessary due to inflation. He said he had received an email from the executive director of the American Council of Engineering Companies in Montana which said they had an area in a different part of the code, 85-1219 and they would like that code to be uniform with this bill, so the amendment should accomplish that request.

**Leanne Kurtz**, explained the amendment which was handed out, SB004501.ace **EXHIBIT(1os04a01)**. **Leanne Kurtz** said the amendment did not raise the bidding threshold for DNRC from 15 to 20, but set DNRC's negotiations for architectural engineering and land surveying services to the \$20,000 dollar limit. She said the committee should decide whether to raise DNRC's threshold or just leave it.

**SENATOR GEBHARDT**, said he would leave it to the discretion of the committee.

**SENATOR JOHN BOHLINGER**, asked if the amendment was drafted the way **SENATOR GEBHARDT** wanted it.

**SENATOR GEBHARDT**, recommended all the additions should be changed to \$20,000.

**Leanne Kurtz** said she could draft an amendment that made it consistent with what was being done with Title 18 in this bill.

**Proponents' Testimony:**

**Eric Griffin**, MT Association of County Road Supervisors, submitted written testimony. **EXHIBIT(los04a02)**

**Harold Blattie**, Montana Association of Counties, said **SENATOR GEBHARDT** had brought this bill forward as an inflationary adjustment, and he wanted to provide some history to substantiate that. He explained that HB 310 in the 1987 session established a public policy for the selection of qualified applicants to provide architectural, engineering and land surveying services under public contract. He maintained it established an exception for the services that were expected to cost less than \$10,000. He said it was important to note that prior to the enactment of that bill there was no public policy in the State of Montana for the selection of those services. He went on to say that in 1993 HB 674 was passed to increase that bidding threshold to the current \$10,000. He said he was before the committee today to ask that they again consider an inflationary adjustment. He felt it was appropriate to increase it to the proposed \$20,000 amount. He drew to the committees' attention that this was amending Title 18, so it was not a change that was exclusive to local government. He handed out **EXHIBIT(los04a03)** and **EXHIBIT(los04a04)** and made himself available for questions.

**Vern Peterson**, Fergus County, said this was a MACO resolution that had gone through the process and had the support of the entire membership.

**Bill Gibbs**, Public Works Director for Yellowstone County, said he would like to lend Yellowstone Counties support to SB 45. He believed that raising the limit to \$20,000 recognized some of the fiscal realities of today. He maintained as had been stated, there was certainly a cost not only to the public agencies involved, but to the consultants as well in going through a full blown request for proposals process. He thought this bill was very positive for the smaller type projects, and it would definitely relieve an overhead burden not only to county staff, but to some of the consultants.

**Dan McCauley, ENTRANCO Consulting Firm,** said he wanted to give testimony in support of the bill from the consultants side. He said he too had noticed inflation had taken it's toll on the \$10,000 figure and he thought \$20,000 was a very fair number. He said it effected them both positively and negatively because if they had not been involved in a project they liked to see it go out to open competition. He said on the other hand a lot of times, minds have been made up on who would do the work. He agreed with the previous testimony about the cost of doing the proposals. He said that as a firm they were very much in support of the bill.

**Jack Knorr, Stillwater County Superintendent of Roads and Bridges,** said they were there in support of SB 45. He agreed with the inflationary topics that had been discussed. He said that as a medium size county their dollars were very important. He said if they could save a \$1,000 dollars here and there it would help his department tremendously. He reiterated they were very much in support of the bill.

**Robert Throssell, MT Technical Council,** said the MT Technical Council was made of various professional engineering and architectural organizations in the state and they were in support of SB 45 for the same reasons stated previously in other testimony. He also stated that the amendment to make the figure consistent throughout the code was a good idea. He submitted written testimony for Jay Skoog. **EXHIBIT (los04a05)**

**John Ostlund, Yellowstone County,** said for all the reasons previously stated they supported SB 45.

**Lee Provance, Gallatin County Road and Bridge,** said he was in support of the bill and would appreciate the committees support as well.

**Sam Harris, Pondera County Commissioner,** said they were in support of the bill, and agreed with all the previous testimony.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**SENATOR RICK LAIBLE,** asked **Senator Gebhardt** about the section that said "an agency may not separate service contracts or split or break projects for the purpose of circumventing the provisions on this part". He wondered if that applied to projects that were phased?

**SENATOR GEBHARDT**, said for example, if you're renovating a building and you want an elevator put in, and at sometime you would need to upgrade two floors of the building as well, if it cost \$8,000 for the engineering for the elevator, and \$10,000 dollars per floor, in this example if you did one project each year you would end up with a total of \$28,000. He expressed that you had taken one project and broke it into three in order to circumvent the law.

**SENATOR LIABLE**, asked if that example would be acceptable under this statute?

**SENATOR GEBHARDT**, said it had not been acceptable and wouldn't be acceptable now.

**SENATOR JEFF MANGAN**, asked if the contracts that were negotiated and signed under the \$20,000, or the \$10,000 as it was now were put on the docket of a commission meeting so the public would be aware, or if they were just done.

**Harold Blattie**, said they should be. He believed the right of public participation was important. He thought the point that was touched on but not fully elaborated on was the cost to put together a request for qualification was significant. So if it cost \$1,000 to put that proposal together, everyone knew who paid for that proposal in the end. That \$1,000 represented 10% of the \$10,000 and only 5% of the \$20,000 so it would streamline and expedite the process. He appreciated Senator Mangan's concern and hoped and believed that no commission would undertake that issue without proper notice to the public.

**SENATOR MANGAN**, asked what oversight was involved if a negotiation for \$15,000 went to an architectural firm in Helena. He asked if the agency could just hire the firm or how the process worked under this legislation.

**Tom O'Connell, State Architect**, said the state system was a little different than the school districts and local governments. He maintained the state system had in place rules that would allow them on projects under \$250,000 in total value to keep a data base of all architects or engineers that were interested in those projects. He went on to say if there was a project for \$150,000 they would go right to those files, and from the interested firms they along with the agency that needed the work done would pick three names. Then the appointment was made by the director of the Department of Administration. He said if the fee for any project was estimated at the present time to be under \$10,000 the agency could go to the database and chose one of

those firms directly without having to go to the director. If this limit was raised to \$20,000 the same process would be used.

**SENATOR MANGAN**, asked if there was a check and balance system in place to make sure that one firm did not get all the contracts under \$10,000 over the past year to the detriment of the other firms.

**Tom O'Connell**, replied they kept a listing for everything over \$10,000. He stated that every time they went to the director they took previous appointments with them for the director to look at. The director could then say this firm has gotten two projects in the last year and this firm has gotten zero. He asserted that check and balance took place. He said when it was under \$10,000 it was up to him or any agency to keep that listing.

**SENATOR MANGAN**, asked if the heads of the departments had that data available to them from fiscal year to fiscal year on what firm had been used and how much money had been spent?

**Tom O'Connell**, said he couldn't speak for every agency but he had records of everything over \$10,000.

**SENATOR MANGAN**, said he was concerned about the jobs under \$10,000. He asked if you would be able to know if a certain firm had gotten all the contracts for under \$10,000 dollars this last fiscal year.

**Tom O'Connell**, said he would not know, he would have to ask the specific agency.

**SENATOR SQUIRES**, asked if Mr. O'Connell liked the bill.

**Tom O'Connell**, replied they were ok with it.

**SENATOR SQUIRES**, asked if it affected any other bidding processes for state activity.

**Tom O'Connell**, said this was specifically for architects, engineers, and land surveyors.

**SENATOR WHEAT**, asked who estimated what the fees would be.

*{Tape: 1; Side: B}*

**Tom O'Connell**, replied that it would be the agencies that dealt with contacts all the time.

**SENATOR WHEAT**, asked if he had any specific criteria he used to select firms that were below the specific dollar amount.

**Tom O'Connell**, said the only criteria that he used was that each one of the firms that wanted to be considered, submit to his office a list of qualifications, and those files are pulled up each time and a firm is selected from those files.

**SENATOR WHEAT**, assumed that Mr. O'Connell used his discretion to make the decision.

**Tom O'Connell**, said that was correct.

**SENATOR WHEAT**, asked if the raise from \$10,000 to \$20,000 was sufficient.

**Tom O'Connell**, replied he believed it was. He believed it to be a reasonable figure.

**SENATOR WHEAT**, asked the sponsor how the figure \$20,000 was selected.

**SENATOR GEBHARDT**, replied he did not know.

**Eric Griffin**, replied he had grabbed the figure out of the air. He said it seemed to work based on his experiences with past projects.

**SENATOR WHEAT**, said he was trying to figure out how the \$20,000 figure was landed on. He asked if they were finding as they were contracting for services that a certain percentage of the contracts fell below the \$20,000 limit.

**SENATOR GEBHARDT**, said they had wanted to upgrade the Musselshell County Courthouse. He explained that their practice was to ask for three offers and then pick a contractor based on price and quality. He said they had only received one offer to do the work on the courthouse. The engineering firm said the price would be \$9,000 to finish the initial work. He went on to explain that the county had asked the engineer to do other work after the initial bid without thinking about the cost, and when the job was done the total bill came to \$11,000. So they had broke the limit. He believed that most basic work would fall under the \$20,000 limit and major construction proposals would cost over \$20,000.

**SENATOR LIABLE**, asked Eric Griffin based on his experience in his county, what percentage of the contracts that were let would be

less than \$10,000. And if the number went to \$20,000 what percentage of those contracts would be under \$20,000.

**Eric Griffin**, said it would be difficult to give an exact percentage. He said that the \$20,000 figure would allow his county to perform their everyday business. He believed that the \$10,000 limit was a real handicap for him to do business. He said that over the past five or six years, his experience had shown him that the \$20,000 figure would allow him a little more flexibility.

**SENATOR LIABLE**, said he was not asking for an exact percentage, but wondered if the amount of contracts bid under \$10,000 were around 80 percent or 5 percent.

**Eric Griffin**, said he would say 25 percent of his budget was spent on \$10,000 dollars or under contracts.

**SENATOR LIABLE**, asked what he would anticipate the percentage to be if the limit was raised to \$20,000.

**Eric Griffin**, said he would not see a huge difference, maybe another 10 percent. He did not think it would make a huge difference in what he put out in requests for proposals, it would just allow him a little more flexibility.

**Closing by Sponsor:**

**SENATOR GEBHARDT**, said he believed the testimony had been mostly positive and he would appreciate a vote in support of the bill.

**HEARING ON SB 46**

**Sponsor:** SENATOR KELLY GEBHARDT, SD 4, Roundup

**Proponents:**

Harold Blattie, Montana Association of Counties  
Vern Peterson, Fergus County  
Eric Griffin, Lewis and Clark County  
Bill Gibbs, Yellowstone County  
Jack Knorr, Stillwater County  
Lee Provance, Gallatin County

**Opponents:**

Dennis Iverson, MT Contractors Association  
Carl Schweitzer, Subcontractors of Montana



**Opening Statement by Sponsor:**

**SENATOR KELLY GEBHARDT, SD 4, Roundup,** said that currently counties were required to enter into a contract for services, and he believed it was detrimental to counties, and to taxpayers in the state of Montana. He said for example a road department might have it's employees go out and gravel roads when there are times of no snowfall. Over a period of years they may do a job on a road that is worth two or three hundred thousand dollars. With the law as it stands right now, that would not be possible. He maintained if the road department and local governments were going to comply with the law as it stands now they would have to sit and look out the windows. He stated that this bill would allow good utilization of county employees and he asked for support.

**Proponents' Testimony:**

**Harold Blattie, Montana Association of Counties,** said SB 46 was a bill to remove some language that was inserted in HB 338 in the 1999 session unbeknown to local governments. He said the first page of his handouts was HB 338 as introduced and the second page was HB 338 as amended. **EXHIBIT (los04a06)** He gave some history of the statute, and explained that HB 338 was originally meant to allow counties to do business within their local communities. MACO appeared in favor of that. During executive action, the language "must be entered into by a county" was inserted into the bill. Unfortunately, they were not aware of this and it was not discovered for about a year and half. He said they felt that language was in opposition to the title of the bill, and this bill would remove that language and take it back to what Representative Masolo first proposed.

**Vern Peterson, Fergus County,** commented that the formal bidding process was very time consuming and also adds cost to the project whatever it might be. He said that they basically contract for everything, just not formally. He said, if it was a service, they did requests for proposals. He said, they were very responsive to clients and because budgets were so tight, they couldn't afford to buy on whim. He said another problem with formal contracts was the method of payment. Some things are easier to measure and weigh than others. Some jobs like flattening slopes on roads and taking out sharp vertical's, would require a consultant to stake the job and figure out the yardage before a contractor could bid a price. Once your that far you have to add quality control, etc. It adds a maraud of things that the local governments are doing now without the formal process. He believed establishing an arbitrary limit for what needed to be contracted would be irresponsible. He commented that there were

very few irrational county commissioners and he asserted they used good judgment.

**Eric Griffin, Lewis and Clark County**, submitted written testimony  
**EXHIBIT (los04a07)**

**Bill Gibbs, Yellowstone County**, encouraged the committees support. He said the language "must be entered into by a county" caused him concern. He said his plea was to allow the counties the flexibility they needed to do things that were cost effective and made sense from a fiscal perspective. He said that the flexibility to complete jobs with their own personnel and equipment was important from time to time. **{Tape: 2; Side: A}** He said that twice a year the county may choose from a cost efficient stand point to do a project itself that would exceed \$50,000. He explained on the other hand that in their budget this year, they would be purchasing from contractors, vendors, equipment suppliers, gravel suppliers, asphalt suppliers and a full range of those type of private sector businesses. They will be purchasing on the material side somewhere between \$900,000 and \$1.2 million dollars worth of products. He went on to say if you looked at capital equipment which would be things like a wheel loader, a motor grader, large pieces of machinery or equipment, they would purchase in excess of \$367,000. He said if you were to add those two together, Yellowstone county would be going to contract with a private supplier, vendor or contractor somewhere in the realm of \$1.4 million. He said there were some occasions that came up when they would like the flexibility to do a road project that would be in excess of \$50,000 and he encouraged the committees support.

**Jack Knorr, Stillwater County**, submitted written testimony  
**EXHIBIT (los04a08)**

**Lee Provance, Gallatin County Road and Bridge Superintendent**, said what the language did in the previous bill was to privatize his operation. He said it was a huge issue to them and he encouraged the committees support.

**Opponents' Testimony:**

**Dennis Iverson, MT Contractors Association**, said he opposed the bill in the most friendly way possible. He said they did have some specific problems. He said you always had to be careful when you let any level of government compete with the private sector, and he believed that was, in part, what was happening with this bill. Secondly there was a potential for mischief, in that one company could be given all the work to the detriment of other companies. He stated it was the contractor's position that the

bill should be going in the other direction, and Senator Liable had a bill coming that did take this in the other direction. He said, they could fully appreciate that local governments needed more flexibility. He said they really would like to work with the counties to find a way to make this work, but he didn't think what this bill was suggesting was the right thing. He asked that if the committee was going to advance the bill, that they would wait a while to do that and if the bill was advanced it would be amended slightly. He said that line 14, failed to include projects like water mains and sewer mains, and on line 17 the word best was confusing to him.

**Carl Schweitzer, Subcontractors of Montana**, echoed the words of Mr. Iverson. He said, as he looked at the bill it seemed like the first decision a county had to make was if they were going to go to contract or were they going to do the work themselves. He thought without the bill, it looked like if it was over \$50,000 they had to go to contract and now that would be up in the air. They did not support the bill for those reasons.

**Questions from Committee Members and Responses:**

**SENATOR JEFF MANGAN**, said he was trying to figure out what the substantive change was. If he understood the issue right the concern was the language that was inserted in 1999 did not allow counties to do jobs themselves, if they were over \$50,000. He did not think counties entered into contracts with themselves. He said he thought they might be reading too much into a couple of words. He asked how this issue was brought up.

**Harold Blattie**, asked the committee to go back to HB 338. The title of that bill specifically read, "an act allowing counties to contract for the purchase of a vehicle, road machinery or other machinery, apparatus, appliance, equipment, or materials or supplies in an amount of up to \$50,000 without putting the contract out to bid." The language "must be entered into by a county" was inserted and requires that it be put out to bid. What it really said, was you can't do a contract for a project for over \$50,000 without advertising it. The statute prior to having "must be entered into by a county" inserted, required that you advertise if you let it to contract.

**SENATOR MANGAN**, asked if it did not do the same thing right now? He said a contract in excess of \$50,000 may not be entered into by a county governing body without first publishing a notice calling for bids. He said, if the issue was the bidding over \$50,000, he did not believe it was addressed with this bill.

**Leanne Kurtz**, stated that under current law a county doesn't have a choice. They must enter into a contract for projects over \$50,000 and they must go to bid. If this bill were passed, the county would have the choice of whether or not to enter into a contract for projects over \$50,000, and if they made that choice, it would have to go to bid.

**Harold Blattie**, replied this had been subject to litigation over the past year. The court found with the county, primarily because it was a utility project rather than a repair maintenance project. He said the argument was being brought forth and discussed in the public forum.

**SENATOR CROMLEY**, said that as he understood the statute, it wasn't doing what they thought it was doing. He said the statute had six or seven extra words that did not make sense, and that this bill would take those words out but make no substantive change in the law. He asked if Harold agreed with that.

**Harold Blattie**, said if that was the perception of everyone on the committee then the bill should just pass. He said it would certainly provide a great deal of comfort to the counties. He suggested that Alec Hanson had more knowledge of the particular situation and how it evolved.

**SENATOR CROMLEY**, referred the question to Alec Hanson

**Alec Hanson**, said their involvement in the issue went back about twenty years. He commented that Leanne Kurtz explanation was exactly right. The option for counties to do their own work was no longer there if the work would be in excess of \$50,000. He said the old language was still there for the cities. He explained that if the cities did the work themselves they did not have to obtain bids. If there was a contract, they would have to obtain bids.

**Leanne Kurtz**, paraphrased the city statute. She suggested that the bill be amended to match the city language. She thought that would clean up a lot of the confusion.

**Alec Hanson**, said the reason they were different was because there was an attempt to increase the bid limits for cities in the 2001 session that included the language that is now in the county statute. They did not want that language in the city statute so they asked the request be withdrawn and the sponsor agreed to that.

**SENATOR WHEAT**, asked Lee Provance to respond to Mr. Iverson's concerns about the private contractors not getting work from the counties.

**Lee Provance**, said there were certain things that the counties did better and more cost efficiently than a contractor could. He said, the things they were not as efficient at they would contract out. He said they hadn't been obeying the law as it presently read, because almost everything they did cost over \$50,000.

**SENATOR WHEAT**, asked how they knew it would be cheaper for them to do trucking and gravel operations?

**Lee Provance**, replied that he knew he could produce gravel for \$3 a yard, and that he would have to buy it for \$6 a yard. He said they mixed clay with it to help it not fall apart, and the contractors could not do that for under \$12 a yard. He said it was \$25 an hour to blade a road. He asserted they could not hire a grader and a man for \$25, an hour so there was a huge discrepancy there.

**SENATOR GLASER**, asked Dennis Iverson if they had a project over \$50,000 under the system as it was now, if they must bid it.

**Dennis Iverson**, said that was correct.

**SENATOR GLASER**, asked in the event this was to pass, who did the work over \$50,000?

**Dennis Iverson**, said he agreed there were some things that the local governments could do a lot better. For example plowing snow. He said the trouble with this bill was that everything was on the table. He said that one of the difficulties was tracking costs. For example the counties don't pay prevailing wage. He said it was an apples and oranges thing when you started comparing. He said another problem that needed to be discussed was how the counties allocated their fixed costs. He was certain they could come to the right answer, but by opening it up the way the bill was suggesting, you could not find out which things were more efficiently done one way and which were more efficiently done another way.

**SENATOR GLASER**, asked if it was in the chairman's wisdom to form a subcommittee where everyone could sit down together, if Mr. Iverson thought the problems could be resolved in an equitable fashion for all people?

**Dennis Iverson, {Tape: 2; Side: B}** said he did not know if it could be resolved quickly in a subcommittee because he hadn't worked on the issue as extensively as the others, but he was willing to try.

**SENATOR GLASER,** said if Senator Liable had a bill coming that was the inverse of this bill, and they were going to deal with that as well, it would be wise to deal with them together in a subcommittee.

**SENATOR WHEAT,** asked if it wasn't better for the local governing entity to make a decision on what ought to be let out to bid and what shouldn't?

**Dennis Iverson,** said he did not think it was quite that simple. Negotiated contracts might cause problems, and a thing called design build could cause a problem. He said he agreed with Senator Wheats assessment but felt there were more issues involved.

**SENATOR WHEAT,** said he believed there were some communities that were more able to deal with this at the local level and had fears that they could clog it up at the legislative level.

**Dennis Iverson,** said he agreed, and he thought whatever would work should be as clean and simple as possible. He thought it should have some criteria though so there would not be the potential for a complete runaway.

**SENATOR ESP,** asked John Ostland if had any comments.

**John Ostland,** addressed the questions revolving around costs and how the government controls and keeps track of those costs. He said Yellowstone County had an excellent system, that had a nationally accepted FEMA rate for depreciation and they tracked through a very extensive computer system, all the costs associated with a project. He thought that common sense needed to be the dominant factor when considering this bill. He asserted that little rural counties did not have the money to go out and bid a lot of big contracts, in order to provide service they have to do a lot by themselves. He said after thirty years in the business that Yellowstone County had an excellent relationship with all the contractors in that area. He said they worked together very well and received a large portion of the county budget. He said this bill was only intended to free up some language to allow the counties to provide service to the residents at the lowest cost. He said it was cost effective for a county to open their own gravel pit. He said this committee needed to recognize the most important thing is that the

residents of rural Montana communities get service. He urged the committee to support the bill. He was sure that if they questioned it in depth, they would find across the state there were not any problems between the contractors and the counties. He believed they had an excellent relationship.

**SENATOR LIABLE**, said it was his understanding they were trying to get a bill that allowed the counties up to \$50,000 to make the decision about doing work themselves. He said projects over \$50,000 had to go to bid and be awarded contracts. He said the problem was those items that were continually being done by the county like snow removal and etc., exceeded \$50,000. He wondered if John Ostlund thought this bill would not allow counties to continue that kind of work.

**John Ostland**, said because of the cost of equipment and labor it does restrict the abilities of the counties to provide excellent service. He said in rural counties where you add thirty miles or more to a haul route, the trucking becomes so expensive that a short gravel project had exceeded that cost. He said if the counties had the ability to open a small pit, and do the maintenance and reclamation on that pit themselves, they could produce low cost material and service rural residents.

**SENATOR LIABLE**, asked if you left the language in the bill that said a contract must be entered into by a county, except you put an exception in "the following items may be at the discretion of the county and include those items" would that do the same thing your concerned about.

**John Ostland**, said he thought that language could be worked out effectively.

**SENATOR GLASER**, said we found ourselves with two conflicting bills. He said that some counties have 550 people in one county and 100,00 or more people in another. He said there was a huge difference from one end to the other with one defective statute controlling them. He thought the committee should hear Senator Liable's bill as well and then maybe the committee could do something logical and reasonable to deal with counties that range from 500 people to 100,000 people. He said the logical thing to do was to put it in a subcommittee. He asked if John Ostland thought that was a logical way for the legislature to handle both bills in such a way that a good law went forward.

**John Ostland**, said that he believed everyone could work together to provide the best service to the customer.

**SENATOR SQUIRES,** said the section "every contract subject to bidding must be let to the lowest and best responsible bidder" kind of bugged her. She asked if because of that language, an out of state bidder had to be selected or if they could use local contractors.

**John Ostland,** replied no, that most contracts were awarded to local contractors.

**SENATOR SQUIRES,** said that line gave her some heartburn. She felt that if you were trying to accomplish economic development in this state that contractors should be citizens of that state and not another state.

**John Ostland,** said that had happened at the state level, but that most of the projects at the county level were done locally.

**SENATOR BLACK,** asked if this would promote more local business or if it would mean that the county would take over the local business that was being done by local contractors now.

**John Ostland,** said he didn't think you would see the counties take on any additional responsibility that they hadn't been doing historically throughout the past.

**SENATOR BOHLINGER,** said it was clear that the issues brought forward would suggest a subcommittee be appointed to study the bill and it's relationship to Senator Liable's bill. He said that after Senator Liable's bill was heard he would appoint a subcommittee to examine both the bills to provide laws that are best for all counties.

**Closing by Sponsor:**

**SENATOR GEBHARDT,** said it was an interesting debate. He did not think that any county had a problem with entering into a contract. The problem was that accumulative thing and doing the normal day to day maintenance could have a county doing more than \$50,000 dollars worth of work, and they could not do that under the law. He said the attempt was to raise the amount from \$20,000 to \$50,000 for inflationary reasons. He asserted at this point it would be better to go back to what they had in 1999 and have the \$20,000 limit. The only restriction it would place on counties then would be the expense of bidding on smaller jobs.



**Sponsor:** SENATOR KELLY GEBHARDT, SD 4, Roundup

**Proponents:**

Alec Hanson  
Vern Peterson  
Harold Blattie  
Don Judge  
Eric Griffen

**Opponents:**

None

**Opening Statement by Sponsor:**

*{Tape: 3; Side: A}*

**Senator Kelly Gebhardt**, said Senate Bill 47 was to address an inflationary issue, like 45 and 46 did. He said this bill addressed the use of gas tax money. It was to increase the bid threshold for local government construction contracts paid for with gasoline and vehicle tax revenue. He thought it would be good to attach it to Senate Bill 46 so if some one wanted to change the amount of money for inflationary reasons we would not have to draft 19 bills to cover all the different dollar amounts. He said if you used gas tax money and had a job in excess of \$4,000 you had to go through the bidding process, and that was expensive. So the idea was to raise the amount up to be equal with amounts in other similar statutes. The amendment made cities and towns and counties uniform. **EXHIBIT (los04a09)**

**Proponents' Testimony:**

**Alec Hanson**, said the only thing that mattered in this bill was on page 3 line 2 section 5, all funds allocated by this section to counties, cities, and town, consolidated city-county governments, must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of \$4,000. He maintained the part that was stricken was the heart of a law suit in 1985. The court ruled the language that said "in which the contract" means that if there was not a contract the cities and counties could do the work themselves. This amendment put that language back in. So what this would say is where there was a contract, the bid limit is set by the other statute. For counties it would be \$50,000 and for cities, it would be \$25,000. It replaces the \$4,000 which is very old. The simple intent of this bill as it

was introduced was to take a number that was totally irrelevant in today's economy and raise it to \$25,000 or \$50,000 dollars. He maintained the amendment that restored the stricken language was necessary, for them to be in support of the bill.

**Vern Peterson**, said that Alec had covered the issue quite well. He added one of the things that they were trying to accomplish was to have consistency among all the bidding requirements. This would prevent mistakes and write ups from auditors, and costing the tax payers money.

**Harold Blattie**, was in support of the bill with the amendment, so when the \$50,000 dollar figure was increased, this section of law would increase as well. The \$4,000 dollar figure was archaic and gave auditors good reasons to write extra lines in an audit report.

**Don Judge**, said he was a proponent with the amendment attached to the bill.

**Eric Griffin**, submitted written testimony. **EXHIBIT (los04a10)**

**SENATOR MANGAN**, said he believed Mr. Griffin was supporting the bill with amendments, so he might want to withdraw his written testimony.

**SENATOR BOHLINGER**, said it should be noted in the record that Mr. Griffin supported the bill with the amendment.

**Informational Testimony:**

**Dennis Iverson**, said that the bill was a good idea, and depending on the amendments, their position may or may not change.

**Questions from Committee Members and Responses:**

**SENATOR GLASER**, said that Leanne needed to make sure there was no problem in federal law, because federal law was involved in some of the gas tax money.

**SENATOR BOHLINGER**, asked Leanne to check on Senator Glasers request.

**Closing by Sponsor:**

**SENATOR GEBHARDT CLOSED.**

**SENATOR BOHLINGER**, appointed a subcommittee to deal with the issues raised on SB 46. He appointed Senator Gebhardt, Senator

Liabile, and Senator Wheat. He said it was important that the proponents and opponents be at that meeting.

**SENATOR MANGAN**, asked about the amendment that was offered on SB 45. He pointed out he did not think the amendment that was being discussed would fit within the title of the bill and would not be allowed. He did not want Senator Gebhardt to waste a lot of time.

**SENATOR GEBHARDT**, said that was fine with him.

**SENATOR LIABLE**, commented that his bill was currently an LC number. He said because of the input from the testimony today he thought they might be able to get some of the issues resolved ahead of time.

**SENATOR BOHLINGER**, thought the subcommittee should wait to meet until Senator Liabile's bill was heard in committee.

**SENATOR LIABLE**, said the Contractors and their attorney were meeting with MACO to try to resolve some problems.

**ADJOURNMENT**

Adjournment: 5:00 P.M.

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SEN. JOHN C. BOHLINGER, Chairman

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PHOEBE OLSON, Secretary

JB/PO

**EXHIBIT (los04aad)**